

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN
BA2020006

ORD-2020-02-01

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2020 AND ENDING DECEMBER 31, 2020 FOR THE CITY OF BROOKHAVEN PURSUANT TO ARTICLE V OF THE CITY OF BROOKHAVEN CHARTER, APPROPRIATING AN AMOUNT NOT TO EXCEED \$650,000 FROM THE GENERAL FUND UNASSIGNED FUND BALANCE; AUTHORIZING THE MAYOR TO EXECUTE AND INTERGOVERNMENTAL AGREEMENT (IGA) TO FUND A LOAN BETWEEN THE BROOKHAVEN DEVELOPMENT AUTHORITY AND THE CITY FOR THE PURCHASE OF REAL PROPERTY, ALLOWING THE FINANCE DEPARTMENT TO MAKE TECHNICAL CHANGES AS NECESSARY, AND PROHIBITING EXPENDITURES FROM EXCEEDING ACTUAL FUNDING SOURCES, AND FOR OTHER PURPOSES

WHEREAS, the Official Code of Georgia Annotated, Chapter 36, Section 81, Subsection 3, requires that each local government adopt a balanced budget for all required funds; and

WHEREAS, the Official Code of Georgia Annotated, Chapter 36, Section 81, Subsection 3, Paragraph (d) allows a local government to amend its budget to adapt to changing governmental needs during the budget period; and

WHEREAS, the Brookhaven Development Authority (BDA) has the opportunity to purchase real property that will be an asset to the City's overall development; and

WHEREAS, the BDA will require a loan to bridge the difference between its cash on hand and the purchase price for the property; and

WHEREAS, the City Council finds that the property purchase is in the best interest of the City; and

WHEREAS, the City of Brookhaven maintains balanced budgets, such that anticipated funding sources equal or exceed the proposed expenditures.

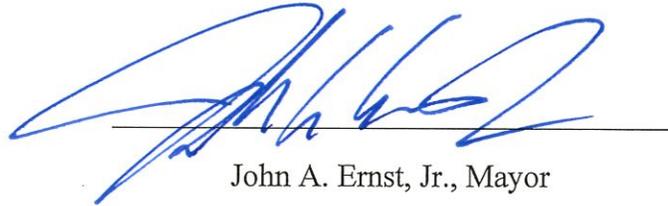
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BROOKHAVEN HEREBY ORDAINS, AS FOLLOWS:

1. The amendment of the budget of the City of Brookhaven for the appropriation of \$650,000 of unassigned fund balance is hereby approved.
2. The City Council authorizes the Mayor to enter into an IGA with the BDA for the repayment of the \$650,000 loan attached as Exhibit A.
3. The City Council authorizes the City Manager or his designee to take any action necessary to complete this ordinance.

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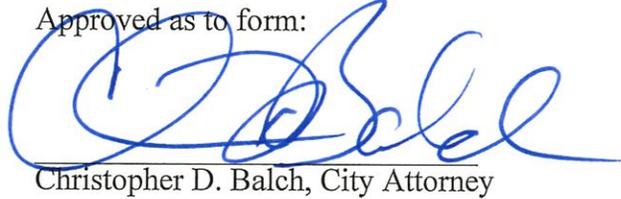
4. Should any section of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the resolution as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SO, ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BROOKHAVEN, THIS 11th DAY OF FEBRUARY 2020.


John A. Ernst, Jr., Mayor

Attest: 
Susan Hiott, City Clerk



Approved as to form:

Christopher D. Balch, City Attorney

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF BROOKHAVEN AND THE
BROOKHAVEN DEVELOPMENT AUTHORITY
AUTHORIZING THE LOAN OF FUNDS FROM THE CITY OF BROOKHAVEN TO THE
DEVELOPMENT AUTHORITY FOR THE PURCHASE OF REAL PROPERTY FOR
ECONOMIC DEVELOPMENT AND OTHER LAWFUL PURPOSES

This Intergovernmental Agreement, entered into this 11 day of February, 2020, by and between the City of Brookhaven ("City"), a municipal corporation organized and existing under the laws of the State of Georgia, and the Brookhaven Development Authority ("BDA"), an entity created pursuant to the Development Authorities Act of the State of Georgia, and collectively referred to as "the Parties":

WHEREAS, the Brookhaven Development Authority (BDA) seeks to purchase certain real property within the City of Brookhaven for strategic economic development purposes; and

WHEREAS, the City finds and concludes that the purchase of the subject property is an appropriate use of public funds, and that the purchase furthers the City's ability to influence and manage strategic economic development; and

WHEREAS, the BDA finds that the proposed purchase is for a lawful purpose related to redevelopment, economic development, and other purposes authorized by the Development Authorities Act; and

WHEREAS, The City and the BDA each and both conclude that the strategic location of this property justifies this transaction and the purchase price agreed to by the BDA;

WHEREAS, The City and the BDA recognize that the Georgia Department of Transportation has planned improvements and alterations to the North Druid Hills and Interstate 85 interchange within the City of Brookhaven that makes this property strategically important to the City of Brookhaven; and

WHEREAS, the North Druid Hills and Interstate 85 Intersection, given its close proximity to the Peachtree Creek Greenway, a model for alternative transportation, community and placemaking, makes this intersection a virtual front door to the City of Brookhaven and the ability of the City and its Development Authority to have a direct say in the look, feel, and ambience of this point of entry are crucial to the City's place in the Metropolitan Community, the Council's vision for the growth and future of the City, and the strategic development of this economic center for the City;

WHEREAS, the City seeks to assist the BDA to accomplish and close the purchase of the property;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and BOE and Foundation agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement in their entirety.
2. **Term.** The term of this Agreement shall be for 8 years, or until December 31, 2027.
3. **Purchase Authorized.** The BDA shall purchase the property located at 2068 North Druid Hills, Brookhaven, Georgia, as provided by the Purchase and Sale Agreement with VEREIT Real Estate, L.P. for the principal sum of \$2,000,000, plus buyer's closing costs and expenses.
4. **Payment for Realty.** The City shall loan BDA the sum of \$650,000 for the use of the BDA to purchase the property and pay necessary expenses and costs for this purchase.
5. **Repayment of Loan:** The BDA shall repay the loan from the City from fees and other income realized by the BDA by making annual installments of \$ 81,250 per year on December 15
6. **Security Interest.** The City shall not retain any security interest in the subject property and will rely, instead, on the good faith and credit of the Development authority for the repayment of the loan amount.
7. **Notices.** All notices, approvals, elections and communications permitted or required hereunder shall be in writing and shall be deemed given, received and effective for all purposes when delivered to the notice address for such recipient as set forth on the signature page to this Agreement, regardless of whether actually received. Notices may be given by courier, or by FedEx or similar overnight courier service or by email with next day delivery by a nationally recognized overnight courier service, and notices may be given by counsel for the parties.
8. **Termination.** In the event either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall, in addition to all other rights and remedies available to such non-defaulting party at law or in equity, have the right to (i) provide written notice to the defaulting party of the intention to terminate this Agreement within thirty (30) days of the written notice (the "**Cure Period**") if such default is not remedied within the Cure Period, or (ii) cure such default at the expense of the defaulting party. Notwithstanding the foregoing, if (i) such default is of such nature that it cannot reasonably be remedied within the Cure Period, (ii) the defaulting party has commenced its efforts to remedy such default within the Cure Period and is diligently and in good faith pursuing such efforts, and (iii) actually remedies such breach within sixty (60) days from the date it first receives notice of default from the non-defaulting party, the non-defaulting party shall not have the right to terminate this Agreement.

9. **Miscellaneous.**

(a) *Binding Effect.* This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, which assignment must be approved by BDA or City, as applicable, consent not to be unreasonably withheld, delayed or conditioned.

(b) *Entire Agreement.* This Agreement to be executed by the parties supersedes all prior discussions and agreements between BDA and City with respect to the construction and maintenance of the Improvements and other matters contained herein, and contains the sole and entire understanding between BDA and City with respect thereto.

(a) *Modification.* This Agreement shall not be modified or amended except by an instrument in writing executed by City and BDA.

(b) *Applicable Law.* This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

(c) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

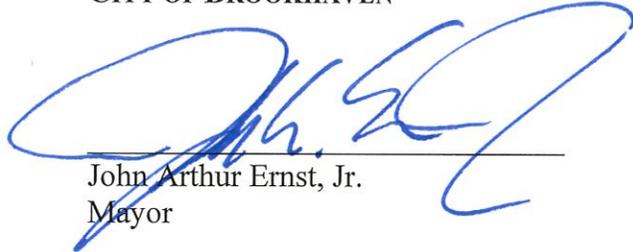
(d) *Time.* Time is and shall be of the essence of this Agreement.

BROOKHAVEN DEVELOPMENT AUTHORITY



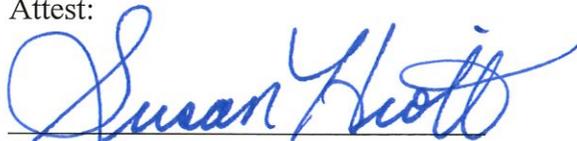
Luke Anderson
Chair

CITY OF BROOKHAVEN



John Arthur Ernst, Jr.
Mayor

Attest:



Susan Hiott
City Clerk